

§511.77 Restrictions as to former members and employees.

The postemployee restrictions applicable to former Administrators and NHTSA employees, as set forth in 18 U.S.C. 207, shall govern the activities of former Administrators and NHTSA employees in matters connected with their former duties and responsibilities.

§511.78 Prohibited communications.

(a) *Applicability.* This section is applicable during the period commencing with the date of issuance of a complaint and ending upon final NHTSA action in the matter.

(b) *Definitions.* (1) “Decision-maker” means those NHTSA personnel who render decisions in adjudicative proceedings under this part, or who advise officials who render such decisions, including:

- (i) The Administrator,
- (ii) The Administrative Law Judges;
- (2) “Ex parte communication” means:

(i) Any written communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker which is not served on all parties,

(ii) Any oral communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker without advance notice to the parties to the proceeding and opportunity for them to be present.

(c) *Prohibited ex parte communications.* Any oral or written ex parte communication relative to the merits of a proceeding under this part is a prohibited ex parte communication, except as provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section:

(1) Ex parte communications authorized by statute or by this part.

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Administrator.

(e) *Procedures for handling prohibited ex parte communication.* (1) Prohibited written ex parte communication. To the

extent possible, a prohibited written *ex parte* communication received by any NHTSA employee shall be forwarded to the Docket Section rather than to a decisionmaker. A prohibited written *ex parte* communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Docket Section. If the circumstances in which a prohibited *ex parte* written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral *ex parte* communication. (i) If a prohibited oral ex parte communication is made to a decisionmaker, he or she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral *ex parte* communication, the decisionmaker shall forward to the Docket Section a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) All communications and statements forwarded to the Docket Section under this section shall be placed in the public file which shall be associated with, but not made a part of, the record of the proceedings to which the communication or statement pertains.

(4) Service on parties. The Administrator shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Administrator that service of the communication or statement